



Paper No. 9

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AUG 16 2002

OFFICE OF PETITIONS

In re Application of :
Kovesdi and Rajasekharan :
Application No. 10/035,952 : ON PETITION
Filed: 26 December, 2001 :
Attorney Docket No. 66566.01US2 :

This is a decision on the petition filed on 13 May, 2002, under 37 CFR 1.47(a). This is also a decision on the petition filed on 4 June, 2002, under 37 CFR 1.182, requesting acceptance of a power of attorney made on behalf of less than all the named inventors.

The petition under 37 CFR 1.47(a) is **DISMISSED**.

The petition under 37 CFR 1.182 is **DISMISSED AS MOOT**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION. Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified issue application was filed on 26 December, 2001, without an oath or declaration. Accordingly, on 4 April, 2002, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for their late filing. In response, on 13 May, 2002, petitioners filed the present petition, accompanied by the petition fee, the required surcharge, and a declaration naming Rozsa Kovesdi and Ajit Rajasekharan as joint inventors and signed by joint inventor

Kovesdi on behalf of herself and on behalf of joint inventor Rajasekharan.

Petitioners state that a copy of the application was sent by certified mail to the non-signing inventor's attorney, but that a declaration executed by the non-signing inventor has not been received.

In support, petitioners have included a copy of a letter transmitting the application papers to Rajasekharan's attorney.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (2). In regards to item (2), the declaration filed with the application papers is defective in that it does not list the mailing address, and the residence address, if the inventor lives at a location which is different from where the inventor customarily receives mail. A new oath or declaration in compliance with 37 CFR 1.63 and 1.64 is required.

Petitioners should note that 37 CFR 1.41(a)(1) now defines the inventorship of a non-provisional application as that inventorship set forth in the oath or declaration filed to comply with the requirements of 37 CFR 1.63. As such, the attorney of record is as specified in the declaration filed on 13 May, 2002. Additionally, a power of attorney made on behalf of less than all of the inventors will not be accepted from an inventor who has not joined in the filing of an application by executing the oath or declaration. As petitioners have requested in the petition filed under 37 CFR 1.182 no relief beyond that requested in the above-identified petition under 37 CFR 1.47(a), the petition under 37 CFR 1.182 is dismissed as moot.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.



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